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18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

20 CALIFORNIA COALITION FOR WOMEN
21 PRISONERS et al.,
22 Plaintiffs,
23 v.
24 UNITED STATES OF AMERICA FEDERAL
25 BUREAU OF PRISONS et al.,
26 Defendants.

Case No. 4:23-cv-04155-YGR

STIPULATED [PROPOSED]
PROTECTIVE ORDER

Judge: Hon. Yvonne Gonzalez Rogers

Trial Date: None Set

1 **I. PURPOSES AND LIMITATIONS**

2 This Stipulated Proposed Protective Order is based on the Court's model protective order,
 3 downloaded from <https://www.cand.uscourts.gov/wp-content/uploads/forms/model-protective->
 4 [orders/ND_Cal_Patent_Highly_Sensitive_Model_Prot_Ord_Revised.docx](#).

5 Disclosure and discovery activity in this action are likely to involve production of
 6 confidential, proprietary, or private information for which special protection from public
 7 disclosure and from use for any purpose other than prosecuting this litigation will be warranted.
 8 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 9 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 10 all disclosures or responses to discovery and that the protection it affords from public disclosure
 11 and use extends only to the limited information or items that are entitled to confidential treatment
 12 under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4,
 13 below, that this Stipulated Protective Order does not entitle them to file confidential information
 14 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
 15 that will be applied when a party seeks permission from the court to file material under seal.

16 Good cause exists for this Stipulated Protective Order. This action concerns allegations of
 17 sexual abuse and retaliation at FCI Dublin, a federal correctional institution. The production of
 18 certain materials to counsel warrants special protection from disclosures to the public and the
 19 parties and from use for any purpose outside of this action, as it contains, in part, sensitive
 20 information pertaining to third-party individuals, including individuals who have a credible fear of
 21 ongoing retaliation, and it discloses techniques, procedures and policies relating to enforcing
 22 safety and security at the FCI and Satellite Prison Camp (SPC) Dublin. Accordingly, to protect
 23 such information, and to ensure that counsel is afforded access to such material, a protective order
 24 for such information is justified in this matter.

25 **II. DEFINITIONS**

26 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 27 information or items under this Order.

28 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is

1 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
 2 of Civil Procedure 26(c).

3 2.3 Counsel: Outside Counsel of Record (as well as their support staff).

4 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
 5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

6 2.5 Designating Party: a Party or Non-Party that designates information or items that it
 7 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
 8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

9 2.6 Disclosure or Discovery Material: all items or information, regardless of the
 10 medium or manner in which it is generated, stored, or maintained (including, among other things,
 11 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
 12 responses to discovery in this matter.

13 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
 14 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
 15 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
 16 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
 17 of a Party’s competitor.

18 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
 19 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
 20 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
 21 less restrictive means.

22 2.10 House Counsel: attorneys who are employees of a party to this action. House
 23 Counsel does not include Outside Counsel of Record or any other outside counsel.

24 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
 25 entity not named as a Party to this action.

26 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
 27 action but are retained to represent or advise a party to this action and have appeared in this action
 28 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

1 For purposes of this Action Outside Counsel of Record refers to the Attorneys from the United
 2 States Attorney's Office or the District of Montana, subject to change if Outside Counsel of
 3 Record changes.

4 2.13 Party: any party to this action, including named parties and putative class members,
 5 and all of a party's officers, directors, employees (including those on administrative or other leave
 6 status), consultants, retained experts, and Outside Counsel of Record (and their support staffs).

7 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
 8 Material in this action.

9 2.15 Professional Vendors: persons or entities that provide litigation support services
 10 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
 11 organizing, storing, or retrieving data in any form or medium) and their employees and
 12 subcontractors.

13 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
 14 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

15 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 16 Producing Party.

17 **III. SCOPE**

18 The protections conferred by this Stipulation and Order cover not only Protected Material
 19 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
 20 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
 21 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
 22 However, the protections conferred by this Stipulation and Order do not cover the following
 23 information: (a) any information that is in the public domain at the time of disclosure to a
 24 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
 25 result of publication not involving a violation of this Order, including becoming part of the public
 26 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
 27 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
 28 the information lawfully and under no obligation of confidentiality to the Designating Party. Any

1 use of Protected Material at trial shall be governed by a separate agreement or order.

2 **IV. DURATION**

3 Even after final disposition of this litigation, the confidentiality obligations imposed by this
 4 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 5 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
 6 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
 7 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 8 including the time limits for filing any motions or applications for extension of time pursuant to
 9 applicable law.

10 **V. DESIGNATING PROTECTED MATERIAL**

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 12 or Non-Party that designates information or items for protection under this Order must take care to
 13 limit any such designation to specific material that qualifies under the appropriate standards. To
 14 the extent it is practical to do so, the Designating Party must designate for protection only those
 15 parts of material, documents, items, or oral or written communications that qualify – so that other
 16 portions of the material, documents, items, or communications for which protection is not
 17 warranted are not swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 19 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 20 unnecessarily encumber or retard the case development process or to impose unnecessary
 21 expenses and burdens on other parties) expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it designated
 23 for protection do not qualify for protection at all or do not qualify for the level of protection
 24 initially asserted, that Designating Party must promptly notify all other parties that it is
 25 withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 27 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 28 Disclosure or Discovery

1 Material that qualifies for protection under this Order must be clearly so designated before
2 the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but
5 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
6 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY” to each page that contains protected material. If only a portion or portions of the material
8 on a page qualifies for protection, the Producing Party also must, to the extent practicable, clearly
9 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
10 specify, for each portion, the level of protection being asserted.

11 A Party or Non-Party that makes original documents or materials available for inspection
12 need not designate them for protection until after the inspecting Party has indicated which material
13 it would like copied and produced. During the inspection and before the designation, all of the
14 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
16 copied and produced, the Producing Party must determine which documents, or portions thereof,
17 qualify for protection under this Order. Then, before producing the specified documents, the
18 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected
20 Material. If only a portion or portions of the material on a page qualifies for protection, the
21 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
22 markings in the margins) and must specify, for each portion, the level of protection being asserted.

23 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
24 Designating Party identify on the record, before the close of the deposition, hearing, or other
25 proceeding, all protected testimony and specify the level of protection being asserted. When it is
26 impractical to identify separately each portion of testimony that is entitled to protection and it
27 appears that substantial portions of the testimony may qualify for protection, the Designating Party
28 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right

1 to have up to 21 days to identify the specific portions of the testimony as to which protection is
 2 sought and to specify the level of protection being asserted. Only those portions of the testimony
 3 that are appropriately designated for protection within the 21 days shall be covered by the
 4 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
 5 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
 6 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 7 ATTORNEYS’ EYES ONLY.”

8 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
 9 other proceeding to include Protected Material so that the other parties can ensure that only
 10 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
 11 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
 12 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
 13 – ATTORNEYS’ EYES ONLY.”

14 Transcripts containing Protected Material shall have an obvious legend on the title page
 15 that the transcript contains Protected Material, and the title page shall be followed by a list of all
 16 pages (including line numbers as appropriate) that have been designated as Protected Material and
 17 the level of protection being asserted by the Designating Party. The Designating Party shall inform
 18 the court reporter of these requirements. Any transcript that is prepared before the expiration of a
 19 21-day period for designation shall be treated during that period as if it had been designated
 20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
 21 agreed. After the expiration of that period, the transcript shall be treated only as actually
 22 designated.

23 (c) for information produced in some form other than documentary and for any other
 24 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
 25 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
 26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of the
 27 information or item warrant protection, the Producing Party, to the extent practicable, shall
 28 identify the protected portion(s) and specify the level of protection being asserted.

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 2 designate qualified information or items does not, standing alone, waive the Designating Party's
 3 right to secure protection under this Order for such material. Upon timely correction of a
 4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
 5 in accordance with the provisions of this Order.

6 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 12 original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
 14 process by providing written notice of each designation it is challenging and describing the basis
 15 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
 16 notice must recite that the challenge to confidentiality is being made in accordance with this
 17 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
 18 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
 19 forms of communication are not sufficient) within 14 days of the date of service of notice. In
 20 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
 21 designation was not proper and must give the Designating Party an opportunity to review the
 22 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
 23 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of
 24 the challenge process only if it has engaged in this meet and confer process first or establishes that
 25 the Designating Party is unwilling to participate in the meet and confer process in a timely
 26 manner.

27 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 28 intervention, the Designating Party shall file and serve a motion to retain confidentiality under

1 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
 2 the initial notice of challenge or within 14 days of the parties agreeing in writing that the meet and
 3 confer process will not resolve their dispute, whichever is later. Each such motion must be
 4 accompanied by a competent declaration affirming that the movant has complied with the meet
 5 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
 6 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
 7 shall automatically waive the confidentiality designation for each challenged designation unless
 8 the Designating Party demonstrates good cause for such delay. In addition, the Challenging Party
 9 may file a motion challenging a confidentiality designation at any time if there is good cause for
 10 doing so, including a challenge to the designation of a deposition transcript or any portions
 11 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
 12 declaration affirming that the movant has complied with the meet and confer requirements
 13 imposed by the preceding paragraph.

14 The burden of persuasion in any such challenge proceeding shall be on the Designating
 15 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 16 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 17 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
 18 file a motion to retain confidentiality as described above, all parties shall continue to afford the
 19 material in question the level of protection to which it is entitled under the Producing Party's
 20 designation until the court rules on the challenge.

21 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 23 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 24 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 25 the categories of persons and under the conditions described in this Order. When the litigation has
 26 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
 27 DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a location and in

1 a secure manner that ensures that access is limited to the persons authorized under this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
3 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
4 information or item designated “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
6 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
7 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
8 attached hereto as Exhibit A;

9 (b) the Receiving Party, and the officers, directors, and employees (including House
10 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and
11 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
13 reasonably necessary for this litigation and who have signed the “Acknowledgment and
14 Agreement to Be Bound” (Exhibit A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff, professional jury or trial consultants, and Professional
17 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
20 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
21 **unless otherwise agreed by the Designating Party or ordered by the court.** Pages of
22 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
23 separately bound by the court reporter and may not be disclosed to anyone except as permitted
24 under this Stipulated Protective Order.

25 (g) the author or recipient of a document containing the information or a custodian or other
26 person who otherwise possessed or knew the information.

27 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
28 Information or Items. Neither the documents designated “HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY" nor its contents shall not be disclosed to any party or putative class
 2 member. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
 3 Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL –
 4 ATTORNEYS' EYES ONLY" only to:

5 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
 6 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
 7 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is
 8 attached hereto as Exhibit A;

9 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
 10 litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
 11 and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

12 (d) the court and its personnel;

13 (e) court reporters and their staff, professional jury or trial consultants, and Professional
 14 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
 15 "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

16 (f) the author or recipient of a document containing the information or a custodian or other
 17 person who otherwise possessed or knew the information.

18 Counsel shall maintain a list of individuals who view these documents. At the conclusion
 19 of these proceedings, counsel shall file that list ex parte and under seal.

20 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY
 21 CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items to Designated House
 22 Counsel or Experts.

23 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
 24 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
 25 that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant
 26 to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the
 27 general categories of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information
 28 that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of

1 the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert's
2 current resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity
3 from whom the Expert has received compensation or funding for work in his or her areas of
4 expertise or to whom the expert has provided professional services, including in connection with a
5 litigation, at any time during the preceding five years,¹ and (6) identifies (by name and number of
6 the case, filing date, and location of court) any litigation in connection with which the Expert has
7 offered expert testimony, including through a declaration, report, or testimony at a deposition or
8 trial, during the preceding five years.

9 (b) A Party that makes a request and provides the information specified in the preceding
10 respective paragraphs may disclose the subject Protected Material to the identified Designated
11 House Counsel or Expert unless, within 21 days of delivering the request, the Party receives a
12 written objection from the Designating Party. Any such objection must set forth in detail the
13 grounds on which it is based.

14 (c) A Party that receives a timely written objection must meet and confer with the
15 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
16 agreement within seven days of the written objection. If no agreement is reached, the Party
17 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as
18 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
19 seeking permission from the court to do so. Any such motion must describe the circumstances
20 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or
21 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
22 suggest any additional means that could be used to reduce that risk. In addition, any such motion
23 must be accompanied by a competent declaration describing the parties' efforts to resolve the
24 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and
25 setting forth the reasons advanced by the Designating Party for its refusal to approve the

27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
28 party, then the Expert should provide whatever information the Expert believes can be disclosed
without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 disclosure.

2 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
 3 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail
 4 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
 5 Material to its Designated House Counsel or Expert.

6 7.5 To the extent that the Court directs that different or modified procedures be
 7 followed concerning the confidential and protected treatment of specific information in the course
 8 of this litigation, the Court's directions shall govern to the extent they are inconsistent with,
 9 modify, or add to or remove from, the provisions set forth in this Protective Order.

10 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 OTHER LITIGATION**

11 If a Party is served with a subpoena or a court order issued in other litigation that compels
 12 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
 13 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

14 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
 15 of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
 17 other litigation that some or all of the material covered by the subpoena or order is subject to this
 18 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 20 Designating Party whose Protected Material may be affected.

21 If the Designating Party timely seeks a protective order, the Party served with the subpoena
 22 or court order shall not produce any information designated in this action as "CONFIDENTIAL"
 23 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the
 24 court from which the subpoena or order issued, unless the Party has obtained the Designating
 25 Party's permission. The Designating Party shall bear the burden and expense of seeking protection
 26 in that court of its confidential material – and nothing in these provisions should be construed as
 27 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
 28

1 another court.

2 **IX. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a Non-Party in
4 this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
5 ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with
6 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
7 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
9 Party's confidential information in its possession, and the Party is subject to an agreement with the
10 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

11 1. promptly notify in writing the Requesting Party and the Non-Party that
12 some or all of the information requested is subject to a confidentiality agreement with a Non-
13 Party;

14 2. promptly provide the Non-Party with a copy of the Stipulated Protective
15 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
16 the information requested; and

17 3. make the information requested available for inspection by the Non-Party.

18 (c) If the Non-Party fails to object or seek a protective order from this court within 14
19 days of receiving the notice and accompanying information, the Receiving Party may produce the
20 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
21 seeks a protective order, the Receiving Party shall not produce any information in its possession or
22 control that is subject to the confidentiality agreement with the Non-Party before a determination
23 by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense
24 of seeking protection in this court of its Protected Material.

25 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
27 Material to any person or in any circumstance not authorized under this Stipulated Protective
28

1 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 2 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
 3 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
 4 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and
 5 Agreement to Be Bound” that is attached hereto as Exhibit A.

6 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 7 PROTECTED MATERIAL**

8 When a Producing Party gives notice to Receiving Parties that certain inadvertently
 9 produced material is subject to a claim of privilege or other protection, the obligations of the
 10 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B), to include the
 11 prompt return, sequestration or destruction of the specified information and any copies they have.
 12 The Receiving Parties must not use or disclose the information until the claim is resolved; it must
 13 take reasonable steps to retrieve the information if the Receiving Parties disclosed it before being
 14 notified of the claim of privilege or other protection. This provision is not intended to modify
 15 whatever procedure may be established in an e-discovery order that provides for production
 16 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 17 parties reach an agreement on the effect of disclosure of a communication or information covered
 18 by the attorney-client privilege or work product protection, the parties may incorporate their
 19 agreement in the stipulated protective order submitted to the court.

20 **XII. MISCELLANEOUS**

21 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 22 seek its modification by the court in the future.

23 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
 24 Order no Party waives any right it otherwise would have to object to disclosing or producing any
 25 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
 26 Party waives any right to object on any ground to use in evidence of any of the material covered
 27 by this Protective Order.

28 14.4 Filing Protected Material. Without written permission from the Designating Party

1 or a court order secured after appropriate notice to all interested persons, a Party may not file in
2 the public record in this action any Protected Material. A Party that seeks to file under seal any
3 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
4 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
5 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
6 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
7 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
8 Material under seal pursuant to Civil Local Rule 79-5 is denied by the court, then the Receiving
9 Party must consult with the Designating Party to assess the materiality and relevance of the
10 document. Unless both parties agree not to use the document, the Receiving Party may file the
11 Protected Material in the public record pursuant to Civil Local Rule 79-5 unless otherwise
12 instructed by the court.

13 **XIII. FINAL DISPOSITION**

14 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
15 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
16 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
17 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
18 the Protected Material is returned or destroyed, the Receiving Party must submit a written
19 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
20 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected
21 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained
22 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any
23 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
24 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
25 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
26 consultant and expert work product, even if such materials contain Protected Material. Any such
27 archival copies that contain or constitute Protected Material remain subject to this Protective Order
28 as set forth in Section 4 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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3 DATED: January 16th, 2024

Respectfully submitted,

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RIGHTS BEHIND BARS
CALIFORNIA COLLABORATIVE FOR
IMMIGRANT JUSTICE
ROSEN BIEN GALVAN & GRUNFELD LLP
ARNOLD & PORTER KAYE SCHOLER LLP

By: /s/ Ernest Galvan
Ernest Galvan

Attorneys for Plaintiffs

DATED: January 16th, 2024

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United States Attorney

/s/ Madison L. Mattioli
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TIMOTHY A. TATARKA
Assistant U.S. Attorneys
Attorneys for Federal Defendants

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____

Yvonne Gonzalez Rogers
United States District Judge